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December 18, 2003

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 981834-TP and 990321-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC and DIECA Communications, Inc. d/b/a Covad Communications Company are and original and fifteen copies of AT&T and Covad's Response to Motions for Reconsideration in the above referenced dockets.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

for Floyd R. Self

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Enclosures
cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.	)	Docket No. 981834-TP
Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation) obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation	)	Docket No. 990321-TP Filed: December 18, 2003

AT&T AND COVAD'S RESPONSE TO MOTIONS FOR RECONSIDERATION

AT&T Communications of the Southern States, LLC ("AT&T") and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), pursuant to Rules 25-22.060(3) and 28-106.204(1), Florida Administrative Code, hereby respond to the motions for reconsideration of elements of Order No. PSC-03-1358-FOF-TP (the "Order") filed by BellSouth Telecommunications, Inc. ("BellSouth"); by Sprint-Florida, Inc. and Sprint Communications Company Limited Partnership ("Sprint"); and by Verizon Florida, Inc. ("Verizon"), and state:

1. On December 10 and 11, 2003, motions were filed by the above listed parties seeking, variously, reconsideration (Sprint, Verizon), clarification (BellSouth, Sprint, Verizon) or modification (BellSouth) of the Order.

2. Rule 25-22.060, F.A.C., establishes the procedures for requesting reconsideration of a final Commission order. There is no rule authorizing motions for clarification or

modification. Therefore, the motions should be considered as seeking only reconsideration, and should be held to the standard for a motion for reconsideration.

3. It is well recognized that:

> [t]he purpose of a petition for rehearing is merely to bring to the attention of the trial court or, in this instance, the administrative agency, some point which it overlooked or failed to consider when it rendered its order in the first instance. . . . It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order. (citations omitted)

Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). In that regard, the standard for a motion for reconsideration is the same as that for a motion for rehearing. See *Department of Revenue v. Leadership Housing, Inc.*, 322 So.2d 7, 8-9 (Fla. 1975), which holds:

> Under the rules and precedents of this Court, the form of appellees' motion ordinarily would be considered improper. In practical effect, it challenges . . . the correctness of his conclusions on the matters considered and passed upon in his order. This is not appropriate in a motion for reconsideration or for rehearing.
>
> . . .
>
> The proper function of a petition for rehearing is to present to the court in clear concise terms some point that it overlooked or failed to consider; only this and nothing more. (citations) Upon an application for rehearing of a cause decided by this court, it is irregular, and an infraction of the rule, to accompany the petition with a written argument and citation of authorities. (citations)
>
> An application for rehearing that is practically a joinder of issue with the court as to the correctness of its conclusions upon points involved in its decision that were expressly considered and passed upon, and that reargues the cause in advance of a permit from the court for such reargument, is a flagrant violation of the rule, and such an application will not be considered. (citations)

Id., citing *Texas Co. v. Davidson*, 76 Fla. 475, 80 So. 558 (1919).

4. A review of the motions for reconsideration filed in this case by BellSouth, Sprint and Verizon reveals that each of them do no more than reargue issues that were specifically

addressed by the Commission in an effort to have the Commission change its mind as evidenced by a review of the issues raised by each party.

BELLSOUTH

ISSUE 6A

5. BellSouth first takes issue with the Commission's ruling on Issue 6A regarding standardized power increments. The Commission devoted almost four full pages of the Order to a discussion of that issue, and cited to testimony from BellSouth's witness regarding the configurations in which power is provided. The Commission even stated that "we believe BellSouth's three basic configurations detailed above [see Order at page 25] allow the greatest flexibility in meeting CLEC DC power provisioning requirements. (Order at page 28). Based on the foregoing, it is clear that the Commission fully considered all of the evidence provided by the parties, and weighed the evidence in reaching its decision on Issue 1A. Therefore, the Commission did not "overlook or fail to consider" any evidence, and the Order should stand as issued.

ISSUE 6B

6. BellSouth next takes issue with the Commission's ruling on Issue 6B regarding the rate charged per ampere of power provided. The commission devoted 13 full pages of the Order to a full discussion and analysis of per ampere rates, and the manner in which amperes would be ordered and billed. The Order makes specific findings in favor of proposals other than BellSouth's, and BellSouth disagrees. However, BellSouth cannot credibly argue that the Commission "overlooked or failed to consider" those issues.

7. BellSouth asks the Commission to "clarify" that the Order does not require the ILEC to provide infrastructure to meet forecast needs of a CLEC. To the contrary, the Order, at

page 40, specifically provides that "a CLEC can order its DC power feeds sized to allow for future demand, but initially fused at a level that is commensurate with its current power needs." The Commission then decided that "[a]n ILEC shall also allow a CLEC, at the CLEC's option, to order a power feed that is capable of delivering a higher DC power level but to fuse this power feed so as to allow a power level less than the feed's maximum to be drawn by the CLEC. . . ."

8. BellSouth further argues with the Commission's decision that the per ampere rate is to be based on "amps used, not fused" by arguing that it will not be able to monitor the CLEC power consumption. This argument is nothing more than a rehash of the arguments raised throughout this proceeding. Factually, the vendors that place fuses are BellSouth certified vendors. Part of their job is to update BellSouth's office records with the fuse information. Hence, BellSouth will be fully aware of the fuse sizes installed on their equipment. BellSouth further asserts that fuses vary in their precision. Fuses are not used to police usage, but rather protect the feeder cables from overheating. Therefore, BellSouth's argument, in addition to being a rehash of their earlier arguments, has no bearing on the issue.

9. Finally BellSouth requests a modification of the Order to allow BellSouth to monitor or audit a CLEC's power usage. BellSouth does not claim that the Commission overlooked or failed to consider this issue, and therefore AT&T and Covad do not believe a modification of the Commission's Order is appropriate. However, AT&T and Covad have no objection to BellSouth monitoring usage, at its expense, and there is nothing in the Order that prevents it from doing so.

10. Based on the foregoing, it is clear that BellSouth has failed to demonstrate that the Commission overlooked or failed to consider any relevant fact in reaching its decision. To the

contrary, the Order contains extensive discussion and consideration with regard to each issue raised in Bellsouth's Motion. Therefore, BellSouth's Motion should be denied.

SPRINT

ISSUE 1A

11. Sprint requests that the Commission reconsider its decision in Issue IA regarding the refund of the collocation application fee in instances where the application did not constitute a Bona Fide Application, or where there is no space available in the central office. Since the issue of application fee refunds was extensively discussed in the Order, Sprint bases its request on an alleged conflict with Order No. PSC-99-1744-PAA-TP issued in this docket on September 7, 1999.

12. There is no question that the Commission has the authority to recede from or overrule its own orders, so long as there is adequate explanation and record foundation for making such a change. *Florida Public Service Commission v. Bryson*, 569 So.2d 1253, 1256 (Fla. 1990); *Southern States Utilities v. Public Service Commission*, 714 So.2d 1046, 1054 (Fla. 1st DCA 1998).

13. In this case, the Commission issued Order No. PSC-99-1744-PAA-TP, but continued to develop its position through the adjudicatory process in this docket. After having heard additional evidence and testimony on the issue, the Commission determined that billing for an application after an initial determination of the nature of the application and availability of space has been made is in the interest of the regulated community and the public. That process is not only authorized, but is desirable. *City of Tallahassee v. Public Service Commission*, 433 So.2d 505 (Fla. 1983). The Commission's decision was based on the record developed in this docket, and was explained in detail in the Order.

14. Sprint failed to demonstrate that the Commission overlooked or failed to consider any issue relating to the billing process for application fees. Sprint's argument that the Commission should not amend its earlier order is not supported by the record of the proceeding or by applicable law relating to the Commission's authority to modify its orders. Therefore, Sprint's motion for reconsideration should be denied.

15. Sprint also requests that the Commission reconsider that element of Issue 1A concerning a CLEC's use of Certified Vendors outside of the CLEC's collocation space. As Sprint has not alleged that the Commission overlooked or failed to consider issues related to the use of Certified Vendors in common areas, the motion for reconsideration should be denied.

ISSUE 7

16. Finally, Sprint requests reconsideration of the Commission's Order regarding the provision of AC power to the CLEC's collocation equipment. A review of the Order demonstrates that the issues of safety regarding the use of AC power in a central office were raised and discussed not only by Sprint, but by Verizon as well. Order at pages 45-47. In that regard, Sprint acknowledges that "[t]he Commission recognized the concerns expressed regarding safety. . . ." Sprint Motion at page 6. The discussion and analysis entered by the Commission clearly indicate that the Commission considered and weighed the evidence presented by all parties in reaching its decision, and that the decision was made in full recognition of the safety issues presented by Sprint and the other parties to this proceeding. Based on the foregoing, Sprint has failed to demonstrate that the Commission overlooked or failed to consider any relevant fact in reaching its decision. Therefore, Sprint's Motion should be denied.

VERIZON

ISSUE 1A

17. In Section I of its Motion, Verizon requests that the Commission reconsider its decision regarding the timing of payment of an application fee. Verizon cites to no record deficiency, but rather seeks reconsideration because the Commission's Order "provides the CLEC's with the wrong incentives." Verizon Motion at p.3. A review of the 8½ pages of argument and analysis reveals that the Commission did not "overlook or fail to consider" the substance of the Verizon Motion. The recitation of the Verizon position set forth at page 10 of the Order shows that the Verizon position was known to the Commission, and the analysis of the issue at page 13 of the Order shows that the issue raised by Verizon was specifically considered and rejected by the Commission. Therefore, the motion for reconsideration should be denied.

18. In Section II of its Motion, Verizon requests that the Commission reconsider its decision regarding the payment of a 50% deposit. The substance of Verizon's motion was specifically addressed by the Commission at page 14 of the Order. Verizon does not allege that the Commission overlooked or failed to consider the relevant facts of the issue, but rather asserts that "neither finding is persuasive. . . . " Verizon has misapprehended the purpose of a motion for reconsideration. As set forth above, the purpose of a motion for reconsideration is not to express disagreement with the Commission's reasoning. Verizon's argument regarding the deposit is beyond the scope of a motion for reconsideration and should be denied.

ISSUE 3

19. Verizon next takes issue with the CLEC to CLEC transfer provisions in Issue 3. Verizon does not seek reconsideration of the Order, but rather a "clarification." The rules of the

Commission do not contemplate a motion for clarification, and therefore, the motion must be held to the standard of a motion for reconsideration.

20. Verizon does not argue that the Commission overlooked or failed to consider any issue relating to CLEC to CLEC transfers. Issues regarding the extent to which the transferring CLEC is to be responsible for bills owed to the ILEC relating to the collocation are dealt with in the Order. The Order recognizes Verizon's position, as expressed in its brief, that the transferring CLEC "should not be permitted to transfer its collocation space without payment of outstanding balances accrued in relation to its interconnection and use of ILEC space, or that may otherwise be required to be paid to the ILEC by contract or applicable law as a condition to transfer." (Order at page 17). That statement is almost identical to that at page 6 of the motion. Therefore, the issue was squarely before the Commission, and was not overlooked in the Order.

21. Verizon also requests that the Commission "clarify" that the acquiring CLEC be jointly and severally liable "for all applicable balances, including disputed balances that are later determined to be valid." This request for "clarification" goes beyond Verizon's initial opposition to CLEC to CLEC transfers and beyond its grudging acceptance of such transfers. This is a new issue, and not one that the Commission overlooked or failed to consider. Therefore, a reconsideration on that ground is inappropriate.

22. Verizon has failed to demonstrate that the Commission overlooked or failed to consider any relevant fact in reaching its decision. To the contrary, the Order contains extensive discussion and consideration with regard to each issue raised in Verizon's Motion. Therefore, Verizon's Motion should be denied.

WHEREFORE, for the reasons set forth herein, AT&T Communications of the Southern States, LLC and DIECA Communications, Inc. d/b/a Covad Communications Company request that the Commission acknowledge its consideration of each of the issues raised in the motions for reconsideration filed by BellSouth, Sprint and Verizon, find that it has not overlooked or failed to consider any of those issues in its deliberations leading to the issuance of Order No. PSC-03-1358-FOF-TP, and deny the motions for reconsideration.

Respectfully submitted this 18th day of December, 2003.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*) and/or U. S. Mail this 18th day of December, 2003.

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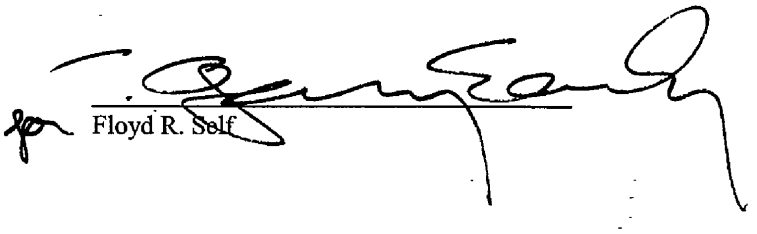

for Floyd R. Self